

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 04-44393 NCD

Chapter 13

Paul A. Rugg and
Jean C. Rugg,

Debtors.

OBJECTION TO CONFIRMATION

TO: Debtors Paul A. Rugg and Jean C. Rugg; Attorney for Debtors, Ronald J. Lundquist; Jasmine Z. Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. General Motors Acceptance Corporation, ("GMAC"), a secured creditor of Debtors, by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtors.

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and GMAC requests this Court to enter an order denying confirmation of Debtors's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for 10:30 a.m. on October 7, 2004, before the Honorable Nancy C. Dreher, in Courtroom West 7, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on August 6, 2004 and the case is now pending in this Court.

5. GMAC holds a valid, perfected interest in a 2004 Buick LeSabre, VIN 1G4HP52KX4U197120, (the "Vehicle"). The value of the Vehicle is \$28,157.67.

6. Copies of GMAC's agreement with Debtors (the "Contract") and evidence of perfection of GMAC's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The balance due to GMAC as of the petition date totals \$32,979.55 together with interest accruing at the contract rate of 2.9%. The fair market value of the Vehicle is \$28,157.67, not including warranties and insurance. Accordingly, the claim of GMAC should be treated as secured to the extent of \$32,979.55.

8. The Plan, however, provides for a secured claim for GMAC of only \$19,000.00; (i) total payment on GMAC's secured claim of \$19,430.00; and (ii) monthly payments of \$2,496.00 commencing in month 1 for 7 months and monthly payments of \$1,938.00 commencing in month 8 for 1 month.

9. The Plan fails to satisfy GMAC's secured claim plus interest utilizing the payments set forth by Debtors.

10. The Plan does not comply with the provisions of Chapter 13.

11. The Plan does not provide GMAC with adequate protection of its interest in the vehicle.

12. Further Debtors purchased the vehicle in close proximity to the filing of this petition and now seek to cram down the value of the vehicle by nearly 50%. Debtors purchased the car on April 10, 2004, just some 118 days prior to filing. At the time of purchase Debtors agreed that the value of the vehicle was \$34,521.09. It is inequitable to allow Debtors to cram down the value as proposed.

13. Movant gives notice that it may, if necessary, call J. Wood, or another representative of GMAC to testify at the hearing.

14. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION
WILL BE USED FOR THAT PURPOSE.

WHEREFORE, GMAC respectfully requests this Court to enter an order denying
confirmation of the Debtors' proposed plan and such other further relief as is just and equitable.

Dated: __September 13, 2004_____

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn (#0324140)
7700 Bonhomme, 7th Floor
St. Louis, MO 63105
(314) 727-0101
Attorneys for GMAC

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***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

GMAC submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

GMAC holds a valid, perfected interest in a 2004 Buick LeSabre, VIN 1G4HP52KX4U197120 (the "Vehicle").

The balance due to GMAC as of the petition date totals \$32,979.55. The interest rate on the Contract is 2.9%. The fair market value of the Vehicle is \$28,157.67 not including warranties and insurances. Accordingly, the claim of GMAC should be treated as secured to the extent of \$28,157.67.

The Plan, however, provides for a secured claim for GMAC of only \$19,000.00; (i) total payment on GMAC's secured claim of \$19,430.00; and (ii) monthly payments of \$2,496.00 commencing in month 1 for 7 months and monthly payments of \$1,938.00 commencing in month 8 for 1 month.

Further Debtors purchased the vehicle in close proximity to the filing of this petition and now seeks to cram down the value of the vehicle by nearly 50%. Debtors purchased the car on April 10, 2004, just some 118 days prior to filing. At the time of purchase Debtors agreed that

the value of the vehicle was \$34,521.09. It is inequitable to allow Debtors to cram down the value as proposed.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtors has proposed payments that do not satisfy GMAC's secured claim plus interest at the contract rate. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, GMAC respectfully requests that the Court deny confirmation of Debtors Chapter 13 Plan.

Dated: September 13, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn (#0324140)
7700 Bonhomme, 7th Floor
St. Louis, MO 63105
(314) 727-0101
Attorneys for GMAC

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UNSWORN DECLARATION FOR PROOF OF SERVICE

Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, P.C., with an office address of 7700 Bonhomme, 7th Floor, St. Louis, MO 63105, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Louis, Missouri addressed to each of them as follows:

United States Trustee
300 South 4th Street, Suite 1015
Minneapolis, MN 55415

(Attorney for Debtors)
Donald J. Lundquist
10 South 5th Street, Suite 700
Minneapolis, MN 55402

(Debtor)
Paul A. Rugg
9013 Nevada Avenue North
Brooklyn Park, MN 55445

(Debtor)
Jean C. Rugg
9013 Nevada Avenue North
Brooklyn Park, MN 55445

(Trustee)
Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 13, 2004

Signed: /e/ Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT
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In re:

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Debtors.

ORDER

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtors. Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtors is denied.

Dated: _____

Nancy C. Dreher
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13

Paul A. Rugg & Jean C. Rugg,

Bky. No. 04-44393-NCD

Debtor(s).

Affidavit of J. Wood

I, J. Wood, of General Motors Acceptance Corporation, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. General Motors Acceptance Corporation has a security interest in the following (the "Collateral"):

N04 BUICLESABRE VIN/HIN: 1G4HP52KX4U197120.

2. \$32,979.55 is the outstanding balance under the contract as of August 6, 2004.


3. \$0.00 is the amount of the existing delinquency as of August 6, 2004.

4. \$28,157.67 is the replacement value of the Collateral.

5. Yes Appropriate insurance has been verified.

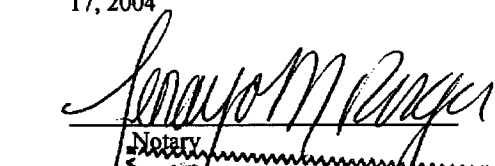
Further your affiant sayeth not.


Dated: 8/17/2004



J. Wood
Bankruptcy Specialist
General Motors Acceptance Corporation

Subscribed and sworn to before me on August
17, 2004



Notary
 JENAYA M. ROIGER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2008